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Action—Refusal of Ruling of Trial Court Held Proper—Appeal and Error—Credibility of Witness Not Reversible—Costs—Double Costs Against Plaintiff Where Appeal Is Frivolous

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REVIEW OF RECENT DECISIONS

ACTION—REFUSAL OF RULING OF TRIAL COURT HELD PROPER—
APPEAL AND ERROR—CREDIBILITY OF WITNESS NOT REVER-
SIBLE—COSTS—DOUBLE COSTS AWARDED AGAINST PLAINTIFF
WHERE APPEAL IS FRIVOLOUS.

Mantabano vs. Goldman, 145 N. E. 459.

This action was originally commenced in contract or tort. Plaintiff waived the count in contract and relied on tort. The count alleged the conversion of a chattel, although the evidence conclusively showed that there was a sale of that chattel by the plaintiff to the defendant. The finding was for the defendant. Plaintiff then appeals, setting forth the following errors: first, that plaintiff was entitled to judgment, second, that the trial court ruled against the credibility of one of plaintiff's witnesses. The court held that the former presented no error of law, and that the latter was entirely in the discretion of the trial court; and as the appeal is frivolous, double costs were awarded against the plaintiff.

CARRIERS—INJURIES TO STOCK WHILE IN TRANSIT—MEASURE OF
DAMAGES—RECOVERY MUST BE ON CAUSE OF ACTION PLEADED.

Morrow et al. vs. Wabash Ry. Co., 265 S. W. 851.

This was an action to recover damages for loss sustained to plaintiff's cattle. By a written contract, defendant had agreed to ship cattle from Macon, Missouri, to New Orleans, La. When the shipment arrived at East Saint Louis, the connecting carrier refused to trans-ship the cattle on to New Orleans due to their maimed and bruised condition, and consequently the plaintiff was forced to sell them at a loss in East Saint Louis. Plaintiff seeks to recover the difference between the value of the stock before they were delivered to the defendant for shipment and their value when they arrived in East Saint Louis. The Court refused to allow the claim for such measure of damages, saying, "Under the circumstances the measure of damages was the difference between their value at the time and place where they should have been delivered, to wit, New Orleans, and their reasonable market value in East Saint Louis, less the unpaid freight." Plaintiff instead of attempting to hold the defendant on its common law liability introduced live stock contract limiting the defendant's common law liability, and were